2-23-1976

Plezz H. Mears v. Commonwealth of Kentucky

Appellee's Brief 1975-SC-1095

APPELLEE'S BRIEF

SUPREME COURT OF KENTUCKY

File No. 75-1095

PLEZZ H. MEARS — APPELLANT

vs. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE STEPHEN P. WHITE, JR., JUDGE

COMMONWEALTH OF KENTUCKY — APPELLEE

BRIEF FOR APPELLEE

ROBERT F. STEPHENS
ATTORNEY GENERAL

JAMES M. RINGO
ASSISTANT ATTORNEY GENERAL
Capitol Building
Frankfort, Kentucky 40601

GRADY RUFF
COMMONWEALTH ATTORNEY
3rd Judicial District

COUNSEL FOR APPELLEE

I hereby certify that a copy of this Brief has been mailed, postage prepaid, to Honorable Stephen P. White, Jr., Circuit Judge, Courthouse, Hopkinsville, Kentucky 42240; Honorable Grady Ruff, Commonwealth Attorney, 3rd Judicial District, 600 S. Main Street, Hopkinsville, Kentucky 42240; and Honorable Allen W. Holbrook, Assistant Public Defender, 625 Leawood Drive, Frankfort, Kentucky 40601, Counsel for Appellant, this the 23d day of February, 1976.

James M. Ringo
Assistant Attorney General

SUPREME COURT OF KENTUCKY

File No. 75-1095

PLEZZ H. MEARS — APPELLANT

vs. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE STEPHEN P. WHITE, JR., JUDGE

COMMONWEALTH OF KENTUCKY — APPELLEE

BRIEF FOR APPELLEE

MAY IT PLEASE THE COURT:

STATEMENT OF THE QUESTION PRESENTED

WHETHER THE TRIAL COURT CORRECTLY OVERRULED APPELLANT'S RCr 11.42 MOTION TO VACATE JUDGMENT WITHOUT A HEARING.

COUNTERSTATEMENT OF THE CASE

Appellee accepts appellant's statement of the case as substantially correct and accurate. Additional relevant facts and circumstances surrounding the issue raised by appellant in this RCr 11.42 appeal will be set out in the argument which follows.

ARGUMENT

THE TRIAL COURT CORRECTLY OVERRULED APPELLANT'S RCr 11.42 MOTION TO VACATE JUDGMENT WITHOUT A HEARING.

Appellant's primary contention in this RCr 11.42 appeal is that he was denied a fair trial because of evidence introduced which he claims was obtained through an unreasonable search and seizure.

In the direct appeal of the instant case, this Court found that the police had probable cause to make the warrantless arrest and warrantless search of appellant's car so far as it concerned the admission into evidence of the pistol found under the left front seat of appellant's car.

The Court specifically noted that they were not called on to pursue the question of whether the warrantless search of the car after it was impounded required exclusion of the key from evidence. The admission of this key is before this Court on this RCr 11.42 appeal.

Appellee submits that the search of appellant's car, after it was impounded was reasonable, under the circumstances of the instant case, and the evidence seized was properly admissible.

In the case at bar, the police had reasonable cause to believe that appellant's car contained contraband or the fruits of his crime, i.e., the money stolen from the victims, Mr. and Mrs. Butts.

In Chambers v. Maroney, 399 U.S. 42, 26 L.Ed2d 419, 90 S.Ct. 1975 (1970), the United States Supreme Court stated that one ground for justifying the warrantless search of an automobile would be if the police had probable cause to believe that evidence of the crime was concealed in the car.

In the instant case, there was more than sufficient evidence to give the police reasonable cause to believe that the car contained evidence of the armed robbery committed by appellant. Such evidence is clearly set out in this Court's opinion. Mears v. Commonwealth, Ky., 499 S.W.2d 75 (1973).

Furthermore, City of Danville v. Dawson, Ky., 528 S.W.2d 687 (1975), cited by appellant, is distinguishable from and inapplicable to the case at bar. In Dawson, supra, Dawson was stopped for a traffic violation. The police impounded her car to a place of storage and proceeded to inventory the contents. As a result of their inventory, they found alcoholic beverages in the trunk and charged her with illegally transporting alcoholic beverages for purposes of sale. The trial court excluded the evidence found in the trunk of appellant's car on the ground that it was an illegal search. The Commonwealth appealed, seeking a certification of the law.

This Court affirmed stating that the police did not have probable cause to search the vehicle. Dawson was stopped for a traffic violation and there are no facts in the record indicating probable cause to believe the car contained alcoholic beverages. In the instant case, appellant was stopped because the police suspected him of armed robbery. They searched appellant's car because they had reasonable cause to believe it contained evidence of the armed robbery committed by appellant. This was not merely a general inventory search to secure the contents of the car, as in Dawson, supra.

Furthermore, the fact that the police conducted the warrantless search of the car after they impounded it rather than at the time of the arrest does not make the search unreasonable.

In Chambers v. Maroney, supra, the United States Supreme Court stated:

> ". . . For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment.
>
> "On the facts before us, the blue station wagon could have been searched on the spot when it was stopped since there was probable cause to search and it was a fleeting target for a search. The probable-cause factor still obtained at the station house and so did the mobility of the car unless the Fourth Amendment permits a warrantless search seizure of the car and the denial of its use to anyone until a warrant is secured. In that event there is little to choose in terms of practical consequences between an immediate search without a warrant and the car's immobilization until a warrant is obtained. . . " (at 399 U.S. 52)

Appellee submits that the warrantless search of appellant's car was reasonable under the total circumstances of the instant case.

In addition, introducing into evidence the finding of the key in the trunk of appellant's car clearly was not prejudicial as appellant testified at trial that the reason he had the key was that he had stayed in the very room where the armed robbery was committed two days prior to the robbery (Transcript of Evidence, hereafter "TE", 91).

Appellant was prejudiced only by the overwhelming evidence of his guilt. Thus, error from the admission into evidence of the key found in the trunk of appellant's car, if any, was harmless beyond a reasonable doubt, under the circumstances of the instant case. Chapman v. California, 386 U.S.18, 17 L.Ed2d 705, 87 S.Ct. 824 (1967).

CONCLUSION

For the foregoing reasons, we submit that the judgment of the Christian Circuit Court overruling the appellant's motion to vacate filed pursuant to RCr 11.42 should be affirmed.

Respectfully submitted,

ROBERT F. STEPHENS
ATTORNEY GENERAL

James M. Ringo

JAMES M. RINGO
ASSISTANT ATTORNEY GENERAL
Capitol Building
Frankfort, Kentucky 40601

GRADY RUFF
COMMONWEALTH ATTORNEY
3rd Judicial District

COUNSEL FOR APPELLEE